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Tax bulletin

SGV

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PHILIPPINE TAX FIRM OF THE YEAR AND TRANSACTION TAX TEAM OF THE YEAR

Highlights

BIR Rulings

- An informer's reward received in 2012 for information given during the effectivity of the old 1977 Tax Code is not subject to 10% final withholding tax (FWT). However, the reward should be reported for income tax purposes in the year of receipt pursuant to Section 44 of the 1997 Tax Code. **(Page 4)**

- Under the RP-Japan Tax Treaty, dividends paid by a Philippine corporation to a resident of Japan are subject to the 10% preferential tax rate if the recipient holds directly at least 10% of the voting shares of the company paying the dividends, or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends. **(Page 4)**

- Under the RP-US Tax Treaty, dividends paid by a Philippine corporation to a US resident are subject to the 20% preferential tax rate if during the part of the Philippine corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year, if any, the US corporation owns at least 10% of the outstanding shares of the voting stock of the Philippine corporation. **(Page 5)**

BIR Issuances

- Revenue Regulations (RR) No. 13-2013 amends RR No. 13-08 on the definition of raw sugar for VAT purposes. **(Page 5)**

- RR No. 14-2013 amends certain provisions of RR No. 2-98, as last amended by RR Nos. 30-2003 and 17-2003, on the obligation of hospitals, clinics, and health maintenance organizations (HMOs) to withhold and remit taxes on the professional fees of their accredited medical practitioners. **(Page 6)**

- RR No. 15-2013 implements Republic Act (RA) No. 10378 entitled "An Act Recognizing the Principle of Reciprocity as basis for the grant of Income Tax Exemptions to International Carriers and Rationalizing other Taxes Imposed thereon by Amending Sections 28(A)(3)(A), 109, 118 and 236 of the National Internal Revenue Code (NIRC), as amended, and for other Purposes". **(Page 7)**

- RR No. 16-2013 amends RR Nos. 16-2003 and 24-2003 and prescribes new rules on the collection of business, income and WT on income payments by and to privilege stores, popularly known as "tiangge", and imposes obligations on the organizers or exhibitors of space for the operation of such stores and the privilege store operators. **(Page 16)**

- RR No. 17-2013 clarifies the new retention period for books of accounts and other accounting records. **(Page 19)**

- Revenue Memorandum Circular (RMC) No. 61-2013 prohibits the printing of principal and supplementary receipts/invoices by non-accredited/ unauthorized printers. **(Page 19)**

PEZA Issuances

- All land and building spaces inside a manufacturing economic zone shall be sold or leased only to entities registered or entitled to be registered with PEZA; otherwise, PEZA shall have the right to deny any application for a Permit to Locate. **(Page 19)**

BSP Issuances

- Circular No. 811 amends item (c), Subsection X240.4 of the Manual of Regulations for Banks (MORB) on application for authority to accept government deposits. **(Page 20)**

- Circular No. 812 prescribes guidelines on the submission of a credit card business activity report (CCBAR) by all BSP-supervised financial institutions with credit card operations, and their subsidiary/affiliate credit card companies; and adds Subsection X320.16 in the MORB and Subsections 4320Q.16 and 4301N.16 in the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI). **(Page 20)**

SEC Issuances

- SEC Memorandum Circular (MC) No. 15 prescribes policies and guidelines on the issuance by financing and lending companies of commercial papers (CPs), which are exempt from registration requirements pursuant to the Securities Regulation Code (SRC). **(Page 21)**

- SEC MC No. 16 adopts measures in the filing of the Audited Financial Statements (AFS) of companies whose fiscal year ends on December 31, 2013. **(Page 21)**

- SEC MC No. 17 prescribes guidelines on applications for re-registration of corporations with dissolved or revoked certificates of registration. **(Page 22)**

- When the trustee of more than 200 stockholders of a dissolved corporation subscribes to the shares of a new corporation, the new corporation may be considered as a "public company" since a trust was established in favor of the more than 200 stockholders. **(Page 23)**

Court Rulings

- A Preliminary Assessment Notice (PAN) may or may not be protested by the taxpayer, and the non-filing of such protest does not render the PAN final and unappealable.

  The issuance of the Formal Assessment Notice (FAN) before the lapse of the 15-day period for the taxpayer to file its protest on the PAN does not inflict any prejudice on the taxpayer, for as long as the BIR properly served the FAN, apprised the taxpayer of the legal and factual bases of the assessment, and gave the taxpayer the opportunity to protest or dispute the same. **(Page 24)**

- The failure to strictly comply with the requirement under RMO No. 1-2000 to file a tax treaty relief application (TTRA) 15 days prior to availment of the provisions of a tax treaty, should not deprive a taxpayer of the benefit of a tax treaty. **(Page 24)**

BIR Rulings

BIR Ruling No. 340-2013 dated September 2, 2013

An informer's reward received in 2012 for information given during the effectivity of the old 1977 Tax Code is not subject to 10% FWT. However, the reward should be reported for income tax purposes in the year of receipt pursuant to Section 44 of the 1997 Tax Code.

Facts:

In 2012, Mr. X received an informer's reward pursuant to a decision rendered by the Court of Tax Appeals (CTA) in 2009. The confidential information which gave rise to the reward was given by Mr. X during the effectivity of the old 1977 Tax Code, which did not impose any final withholding tax (FWT) on an informer's reward. However, under Section 282 of the new 1997 Tax Code, an informer's reward is now subject to the 10% FWT.

Issue:

Is Mr. X entitled to a refund of the 10% FWT on his informer's reward?

Ruling:

Yes. Section 282 of the 1997 Tax Code took effect on January 1, 1998 and must be applied prospectively. There is nothing in the old 1977 Tax Code which states that the cash reward of informers is subject to 10% FWT. However, receipt of the reward should be reported for income tax purposes in the year of receipt pursuant to Section 44 of the 1997 Tax Code.

BIR Ruling No. ITAD 267-13 dated September 16, 2013

Under the RP-Japan Tax Treaty, dividends paid by a Philippine corporation to a resident of Japan are subject to the 10% preferential tax rate if the recipient holds directly at least 10% of the voting shares of the company paying the dividends, or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends.

Facts:

A Co., a non-resident foreign corporation based in Japan, has been the owner of 99.99% of the shares in B Co., a domestic corporation, since January 27, 1997. On May 17, 2013, B Co. declared cash dividends to A Co, and remitted the dividends on June 24, 2013. The tax treaty relief application (TTRA) for the availment of the 10% preferential tax on dividends under the RP-Japan Tax Treaty was filed with the BIR-ITAD on May 31, 2013.

Issue:

Are the dividends declared and paid by B Co. to A Co. entitled to the 10% preferential tax rate under the RP-Japan Tax Treaty?

Ruling:

Yes. Under the RP-Japan Tax Treaty, dividends paid by a Philippine corporation to a resident of Japan are subject to the 10% preferential tax rate if the recipient Japanese corporation holds directly at least 10% of the voting shares of the company paying the dividends, or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends.

BIR Ruling No. ITAD 284-13 dated September 20, 2013

Under the RP-US Tax Treaty, dividends paid by a Philippine corporation to a US resident are subject to the 20% preferential tax rate if during the part of the Philippine corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year, if any, the US corporation owns at least 10% of the outstanding shares of the voting stock of the Philippine corporation.

Facts:

A Co., a non-resident foreign corporation based in the US, has been the owner of 99.99% of the shares in B Co., a domestic corporation, since August 29, 2008. On December 15, 2012, B Co. declared cash dividends to A Co and remitted the dividends on June 30, 2013. The TTRA for availing of the 20% preferential tax on dividends under the RP-US Tax Treaty was filed with the BIR-ITAD on June 14, 2013.

Issue:

Are the dividends declared and paid by B Co. to A Co. entitled to the 20% preferential tax rate under the RP-US Tax Treaty?

Ruling:

Yes. Under the RP-US Tax Treaty, dividends paid by a Philippine corporation to a US resident are subject to the 20% preferential tax rate if, during the part of the Philippine corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year, if any, the US corporation owns at least 10% of the outstanding shares of the voting stock of the Philippine corporation.

[Editor's Note: In Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corp. and Court of Tax Appeals *(G.R. 66838, December 2, 1991), the Supreme Court ruled that dividends paid by a Philippine corporation to a US resident are subject to the 15% FWT under Section 28(B)(5)(b) of the current Tax Code.]*

BIR Issuances

RR No. 13-2013 amends RR No. 13-08 on the definition of raw sugar for VAT purposes.

Revenue Regulations No. 13-2013 dated September 20, 2013

- Section 2 (b) of RR No. 13-08 is amended to read as follows:

  "(b) Raw Sugar – refers to sugar produced by the simple process of conversion of sugar cane, without a need for any mechanical or similar device such as muscovado. For this purpose, raw sugar refers only to muscovado sugar.

  The centrifugal process of producing sugar is not in itself a simple process. Therefore, any type of sugar produced therefrom is not exempt from VAT."

- These regulations take effect after 15 days following publication in any newspaper of general circulation.

(Editor's Note: RR No. 13-2013 was published in the Manila Bulletin *on September 24, 2013.)*

RR No. 14-2013 amends certain provisions of RR No. 2-98, as last amended by RR Nos. 30-2003 and 17-2003, on the obligation of hospitals, clinics, and HMOs to withhold and remit taxes on the professional fees of their accredited medical practitioners.

Revenue Regulations No. 14-2013 dated September 20, 2013

- Section 2.57.2 of RR No. 2-98, as amended, is further amended to read as follows:

  "Section 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

  x x x

  (l) x x x

  a) *It shall be the duty and responsibility of the hospitals, clinics, HMOs and similar establishments to withhold and remit taxes due on the professional fees of their respective accredited medical practitioners, paid by patients who were admitted and confined to such hospitals and clinics. Hospitals, clinics, HMOs and similar establishments must ensure that correct taxes due on the professional fees of their medical practitioners have been withheld and timely remitted to the Bureau of Internal Revenue (BIR). For this purpose, hospitals and clinics shall not allow their medical practitioners to receive payment of professional fees directly from patients who were admitted and confined to such hospital or clinic and, instead, must include the professional fees in the total medical bill of the patient which shall be payable directly to the hospital or clinic.*

  b) x x x

  c) Hospitals and clinics shall submit the names and addresses of medical practitioners in the following classifications, every 15th day after the end of each calendar quarter, to the Collection Division of the Revenue Region for non-large taxpayers and at the Large Taxpayers Document Processing and Quality Assurance Division (LTDP&QAD) in the National Office or Large Taxpayers District Office (LTDO) in the Region for large taxpayers, where such hospital or clinic is registered, using the prescribed format.

     i. *Medical practitioners whose professional fee was paid by the patients directly to the hospital or clinic;*
     ii. *Medical practitioners who did not charge any professional fee from their patients.*

  d) x x x

  e) Hospitals and clinics shall be responsible for the accurate computation of taxes to be withheld on professional fees paid by patients thru the hospitals and clinics, in the same way that HMOs shall be responsible for the computation of taxes to be withheld from the professional fees paid by them to the medical practitioners, and timely remittance of the 10% or 15% expanded withholding tax, whichever is applicable.

The list of all income recipients-payees in this Subsection shall be included in the Alphalist of Payees Subject to Expanded Withholding Tax attached to BIR Form No. 1604-E (Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax).

Likewise, the hospitals, clinics or HMOs shall issue a Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) to medical practitioners who are subjected to withholding, every 20th day following the close of the taxable quarter or upon request of the payee.

All hospitals and clinics shall submit to the BIR (Collection Division of the Regional Office having jurisdiction over the place where the income earner is registered/Large Taxpayers Collection Division for large taxpayers in Metro Manila/LTDO for large taxpayers outside Metro Manila), in three (3) copies [two (2) copies for the BIR and one (1) copy for the taxpayer], a sworn statement executed by the president/managing partner of the corporation/company as to the complete and updated list of medical practitioners accredited with them."

- The provisions of RR No. 14-2013 shall take effect on October 1, 2013.

(Editor's Note: RR No. 14-2013 was published in the Manila Bulletin *on September 24, 2013)*

RR No. 15-2013 implements RA No. 10378 entitled "An Act Recognizing the Principle of Reciprocity as basis for the grant of Income Tax Exemptions to International Carriers and Rationalizing other Taxes Imposed thereon by Amending Sections 28(A)(3)(A), 109, 118 and 236 of the National Internal Revenue Code, as amended, and for other Purposes".

Revenue Regulations No. 15-2013 dated September 20, 2013

Definition of Terms:

- *Common Carrier* refers to individuals, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public, and shall include transportation contractors.
- *Philippine Carrier* refers to a Philippine Air Carrier and/or Philippine Sea Carrier.
- *Philippine Air Carrier* refers to an airline corporation, duly organized and existing under the laws of the Republic of the Philippines, that is engaged in both domestic and international air transportation of goods, passengers, or both.
- *Philippine Sea Carrier* refers to a shipping corporation, duly organized and existing under the laws of the Republic of the Philippines, that is engaged in both domestic and international sea transportation of goods, passengers, or both.
- *International Common Carrier* refers to an International Air Carrier or International Sea Carrier.
- *Home Country* refers to the country under whose laws the international carrier was duly organized or incorporated.

- *International Air Carrier* refers to a foreign airline corporation doing business in the Philippines which has been granted landing rights in any Philippine port to perform international air transportation services/activities or flight operations anywhere in the world. On-line carriers refer to international air carriers having or maintaining flight operations to and from the Philippines. Off-line carriers refer to international air carriers having no flight operations to and from the Philippines.

- *International Sea Carrier* refers to a foreign shipping corporation doing business in the Philippines, having touched or with the intention of touching any Philippine port, to perform international sea transportation services/activities from the Philippines to anywhere in the world and vice versa, in the case of on-line carriers; or having maintained business establishments, agents or representative offices in the Philippines for the sale of owned tickets/passage documents or tickets/passage documents of other shipping companies, which shipping companies operate without touching any Philippine port, in the case of off-line carriers.

- *On-line flights or voyages* refer to flight or voyage operations carried out or maintained by an international carrier between ports or points in the territorial jurisdiction of the Philippines and any port or point outside the Philippines.

- *Off-line flights or voyages* refer to flight or voyage operations carried out or maintained by an international carrier between ports or points outside the territorial jurisdiction of the Philippines, without touching a port or point situated in the Philippines, except when in distress or due to *force majeure*.

- *Chartered flights or voyages* refer to flight or voyage operations which include operations between ports or points situated in the Philippines and ports and points outside the Philippines, which include block charter, placed under the custody and control of a charterer by a contract/charter for rent or hire relating to a particular airplane/vessel.

- *"Originating from the Philippines"* shall include the following:

    1. Where passengers, their excess baggage, cargo and/or mail originally commence their flight or voyage from any Philippine port to any other port or point outside the Philippines;

    2. Chartered flights or voyages of passengers, their excess baggage, cargo and/or mail originally commencing their flights or voyages from any foreign port and whose stay in the Philippines is for more than 48 hours prior to embarkation, save in cases where the flight of the airplane belonging to the same airline company or the voyage of the vessel belonging to the same international sea carrier failed to depart within 48 hours by reason of *force majeure*;

    3. Chartered flights of passengers, their excess baggage, cargo and/or mail originally commencing their flights or voyages from any Philippine port to any foreign port; and

    4. Where a passenger, his excess baggage, cargo and/or mail originally commencing his flight or voyage from a foreign port alights or is discharged in any Philippine port and thereafter boards or is loaded on another airplane owned by the same airline company or vessel owned by the same international sea carrier, the flight or voyage from the Philippines to any foreign port shall not be considered originating from the Philippines,

unless the time intervening between arrival and departure of said passenger, his excess baggage, cargo and/or mail from the Philippines exceeds 48 hours, except, however, when the failure to depart within 48 hours is due to reasons beyond his control, such as, when the only next available flight or voyage leaves beyond 48 hours or by *force majeure*. Provided, however, that if the second aircraft belongs to a different airline company, or the second vessel belongs to a different international sea carrier, the flight or voyage from the Philippines to any foreign port shall be considered originating from the Philippines regardless of the intervening period between the arrival and departure from the Philippines by said passenger, his excess baggage, cargo and/or mail.

- *Continuous and Uninterrupted Flight or Voyage* refers to a flight or voyage in the carrier of the same company from the moment a passenger, excess baggage, cargo, and/or mail is lifted from the Philippines up to the point of final destination of the passenger, excess baggage, cargo and/or mail. The flight or voyage is not considered continuous and uninterrupted if transshipment of passenger, excess baggage, cargo and/or mail takes place at any port outside the Philippines on another aircraft or vessel belonging to a different company.

- *Place of Final Destination* refers to the place of final disembarkation designated or agreed upon by the parties in a contract of air or sea transportation where the passengers, their excess baggage, cargo and/or mail are to be transported and unloaded by the contracting company.

- *Transient Passenger* refers to a passenger who originated from outside of the Philippines towards a final destination also outside of the Philippines, but stops in the Philippines for a period of less than 48 hours, or even more than 48 hours, if the delay is due to *force majeure* or reasons beyond his control, wherein in both cases, the passenger boarded an airplane or vessel of the same company bound to the place of final destination.

- *Non-revenue passengers* refers to the non-revenue passengers as defined under Resolution No. 788 of the International Air Transport Association regarding Free and Reduced Fare or Rate Transportation and any other Free/Reduced Rate Mileage Programs Administered by individual International Air Carriers.

- *Adult passenger* refers to a passenger who has attained his 12th birthday.

- *Children refer* to passengers who have attained their 2nd but not their 12th birthday.

- *Infant* refers to a passenger who has not attained his 2nd birthday.

- *Baggage* refers to such articles, effects and other personal property of a passenger as are necessary or appropriate for wear, use, comfort or convenience in connection with his trip.

- *Excess baggage* refers to that part of the baggage which is in excess of that baggage which may be carried free of charge.

- *Refund refers* to the repayment to the purchaser of all or a portion of the fare, rate or charge for unused carriage or service.

- *Tax Treaties* refers to the Double Taxation Conventions or Double Taxation Agreements entered into by and between the Philippines and other Contracting States or jurisdictions for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Income Tax:

- *International Carriers WITH Flights or Voyages Originating from Philippine Ports –*

    1. *General Rule* - Subject to 2½% tax on Gross Philippine Billings (GPB), irrespective of the place where passage documents are sold or issued, unless subject to a preferential rate or exemption on the basis of a tax treaty or international agreement to which the Philippines is a signatory, or on the basis of "reciprocity."

        - GPB shall include the total amount of gross revenue derived from passage of persons, excess baggage, cargo and/or mail, originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the passage documents.

        - The gross revenue for passengers whose tickets are sold in the Philippines shall be the actual amount derived for transportation services, for first class, business class or economy class passage, as the case may be, on its continuous and uninterrupted flight from any port or point in the Philippines to its final destination in any port or point of a foreign country, as reflected in the remittance area of the tax coupon forming an integral part of the plane ticket.

        - In this case, the GPB shall be determined by computing the monthly average net fare of all the tax coupons of plane tickets issued for the month per point of final destination, per class of passage (i.e., first class, business class, or economy class) and per classification of passenger (i.e., adult, child or infant), and multiplied by the corresponding total number of passengers flown for the month as declared in the flight manifest.

        - For tickets sold outside the Philippines, the gross revenue for passengers for first class, business class or economy class passage, as the case may be, on a continuous and uninterrupted flight from any port or point in the Philippines to final destination in any port or point of a foreign country, shall be determined using the locally available net fares applicable to such flight, taking into consideration the following:

            a) The seasonal fare rate established at the time of the flight;
            b) The class of passenger (whether first class, business class, economy class or non-revenue);
            c) The classification of passenger (whether adult, child or infant);
            d) The date of embarkation; and
            e) The place of final destination.

        - Passage documents or tickets revalidated, exchanged and/or endorsed to another on-line international airline shall be included in the taxable base of the carrying airline and shall be subject to GPB tax if the passenger is lifted/boarded on an aircraft from any port or point in the Philippines towards a foreign destination.

        - The gross revenue on excess baggage which originated from any port or point in the Philippines and destined for any part of a foreign country shall be computed based on the actual revenue derived, as appearing on the official receipt or any similar document for the said transaction.

- The gross revenue for freight or cargo and mail shall be determined based on the revenue realized.

  a) The amount realized for freight or cargo shall be based on the amount appearing on the airway bill after deducting the amount of discounts granted, which shall be validated using the following:

     - Monthly cargo sales reports generated by the IATA Cargo Accounts Settlement System (IATA CASS) for airway bills issued through cargo agents; or

     - Monthly reports prepared by the airline themselves or by their general sales agents for direct issues made.

  b) The amount realized for mail shall, on the other hand, be determined based on the amount reflected in the cargo manifest of the carrier.

- In case of the passenger's passage documents or flights from any port or point in the Philippines and back, that portion of revenue pertaining to the return trip to the Philippines shall not be included as part of GPB.

- In case of a flight that originates from the Philippines, but transshipment of passenger, excess baggage, cargo and/or mail takes place elsewhere in another aircraft belonging to a different airline company, the GPB shall be determined based on that portion of the revenue corresponding to the leg flown from any point in the Philippines to the point of transshipment.

- In cases where a flight is interrupted by *force majeure* resulting in the transshipment of the passengers, their excess baggage, freight, cargo and/or mail to another airplane operated by another airline company and transshipment takes place in another country, the GPB shall be determined based on that portion of flight from the Philippines up to the point of said transshipment.

- Non-revenue passengers shall not be given value for purposes of computing the taxable base subject to tax.

  Refunded tickets shall, likewise, not be included in the computation of GPB.

- In computing the taxable amount, the foreign exchange conversion rate to be used shall be the average monthly Airline Rate as provided in the Bank Settlement Plan (BSP) monthly sales report or the Bankers Association of the Philippines (BAP) rate, whichever is higher.

- The average monthly BAP rate shall be computed by adding all the different BAP rates during the month and dividing the same by the number of days during the month.

- Adequate schedules, records and documents shall be kept and maintained at all times in the local principal office or place of business of the international airline, and shall be made available to the assigned internal revenue officers for verification of the gross revenues reported for GPB tax purposes.

- The GPB of international sea carriers shall include the total amount of gross revenue, whether for passenger, cargo, and/or mail, originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

- In proper cases, the domestic shipping agent shall apply for a TIN for each foreign international shipping line it represents.

- Each foreign international shipping line is by itself a taxpayer separate and distinct from the agent, and the other principals of the same agent.

- For purposes of registration and securing the TIN of the principal/s, the shipping agent must submit the Agency Agreement between him and his principal/s, which will suffice as the documentation requirement.

- The shipping agent shall file the pertinent tax returns for each principal using the TIN and name of that particular principal. The shipping agent should not use its own TIN in filing the returns of the principal it represents.

- Attachments to the quarterly and annual GPB returns to be filed by international carriers:

    a) *For quarterly and annual GPB returns* - A Statement of GPB duly certified by an independent Certified Public Accountant, showing the following:

        - The taxable passenger revenue for each flight number or voyage;
        - The cumulative quarterly/annual summary, as well as the monthly summary totals of gross revenue derived from the uplifts/transport of passengers, excess baggage, cargo and mails from the Philippines subject to tax under Section 28(A)(3) of the Tax Code;
        - The applicable average conversion rate to arrive at the taxable GPB, and the GPB rate used in arriving at the tax due for the quarter/year.

    b) *For annual GPB returns* - Audited Financial Statements, even in cases of no-payment returns due to tax exemption.

2. *Preferential Income Tax Rate or Exemption of International Carriers WITH Flights or Voyage originating from Philippine Ports*

    - *Applicable tax treaty to which the Philippines is a signatory:*

        a) In order to avail of the preferential income tax rates under tax treaties, international carriers shall comply with the requirements prescribed under Revenue Memorandum Order (RMO) No. 72-10 on the guidelines on the processing of Applications for Tax Treaty Relief (TTRAs) pursuant to existing Philippine tax treaties.

        b) A TTRA filed by and/or granted to an international carrier prior to the effective date of these Regulations shall remain valid and binding, thereby dispensing with the need for such international carrier to file a new TTRA under these Regulations.

- *Reciprocity* — this may be invoked by an international carrier as basis for GPB tax exemption when its Home Country grants income tax exemption to Philippine carriers.

    a) The domestic law of the Home Country granting exemption shall cover income taxes and shall not refer to other types of taxes that may be imposed by the relevant taxing jurisdiction.

    b) The fact that the tax laws of the Home Country grant business tax exemption, such as that from gross sales tax, for the Philippine operations shall not be considered as sufficient basis for exempting an international carrier from Philippine income tax on account of reciprocity.

    c) Reciprocity requires that Philippine carriers operating in the Home Country of an international carrier are actually enjoying the income tax exemption.

    d) The following procedures shall be observed in order to avail of the GPB tax exemption on the basis of "reciprocity":

        - The international carrier shall file an application with the BIR's International Tax Affairs Division (ITAD) for a confirmatory ruling for its GPB tax exemption on the basis of reciprocity by submitting the following documents:

            i.) Letter-request providing a brief overview of its operations and specifying the legal basis relied upon to establish that its Home Country grants income tax exemption to Philippine carriers;

            ii.) Original copy of consularized certification issued by the tax authority of the Home Country of the international carrier to the effect that such international carrier is a resident of such country;

            iii.) Original copy of a certification from the Philippine SEC stating that the international carrier is registered to engage in business in the Philippines;

            iv.) Competent Proof of Reciprocity

        - Until such time that the Department of Finance (DOF), in coordination with the Department of Foreign Affairs (DFA), has entered into an Exchange of Notes, for purposes of facilitating the availment of reciprocal exemptions between the Philippines and the Home Country of an international carrier, the following documents shall be submitted:

            i.) Original copy of consularized certification issued by the tax authority of the Home Country of the international carrier, stating that Philippine carriers, or in general, all international carriers operating in such country, are granted income tax exemption under its laws, citing the legal basis of such exemption; and

ii.) An official publication of the laws of the Home Country of the international carrier relied upon (in English translation) to establish that its Home Country grants income tax exemption to Philippine carriers; or

iii.) A copy of such laws of its Home Country (in English translation) attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

- Upon the execution of the Exchange of Notes between the Philippines and the Home Country of the concerned international carrier, reference to the relevant Exchange of Notes facilitating the availment of reciprocal exemptions shall suffice for purposes of complying with the requirement of a competent proof of reciprocity described above. The specific procedures expressly provided in the Exchange of Notes may amend/supersede the procedure for availment provided under these Regulations to the extent that they are incompatible with those prescribed in these Regulations.

- Such other documents as may be prescribed by the BIR for the proper evaluation of the application.

- The ITAD shall, upon submission of all the necessary documents, prepare the ruling confirming the tax exempt status of the applicant international carrier, for final approval of the Commissioner of Internal Revenue (CIR) or his or her duly authorized representative.

- *International Carriers WITHOUT Flights or Voyages Starting from or Passing through any point in the Philippines:*

  a) An off-line international carrier having a branch/office or a sales agent in the Philippines which sells passage documents for compensation or commission to cover off-line flights/voyages of its principal or head office, or for other airlines/sea carriers covering flights/voyages originating from Philippine ports or off-line flights/voyages, is not considered engaged in business as an international carrier in the Philippines and is, therefore, not subject to GPB tax.

  b) An off-line international carrier shall be subject to the regular rate of income tax based on its taxable income from sources within the Philippines.

- *Taxability of Income other than Income from international transport services:*

  a) All items of income derived by international carriers that do not form part of GPB shall be subject to tax under the pertinent provisions of the Tax Code.

  b) Demurrage fees, which are in the nature of rent for the use of property of the carrier in the Philippines, is considered income from Philippine sources and is subject to income tax under the regular rate as other types of income of the on-line carrier.

c) Detention fees and other charges relating to outbound and inbound cargo are all considered Philippine-sourced income of international sea carriers, being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate.

Common Carrier's Tax:

- International air carriers and international shipping carriers doing business in the Philippines, on their gross receipts derived from the transport of cargo from the Philippines to another country, shall pay a 3% Common Carrier's Tax on their quarterly gross receipts.

- For purposes of determining the Common Carrier's Tax liability of international carriers, "gross receipts" shall include, but shall not be limited to, the total amount of money or its equivalent representing the contract, freight/cargo fees, mail fees, deposits applied as payments, advance payments and other service charges and fees actually or constructively received during the taxable quarter from cargo and/or mail, originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the passage documents.

- In cases where the GPB tax is not applicable, the Common Carrier's Tax shall still apply.

- An off-line international carrier having a branch/office or a sales agent in the Philippines, which sells passage documents for compensation or commission to cover off-line flights or voyages of its principal or head office, or for other airlines/sea carriers covering flights or voyages originating from Philippine ports or off-line flights or voyages, is not considered engaged in business as an international carrier in the Philippines and is, therefore, not subject to the 3% Common Carrier's Tax.

Value-Added Tax (VAT):

- The transport of passengers by international carriers doing business in the Philippines shall be exempt from VAT.

- The transport of cargo by international carriers doing business in the Philippines shall be exempt from VAT as the same is subject to Common Carrier's Tax

- Exempt international carriers shall not be allowed to register for VAT purposes.

Reportorial Requirements:

- International carriers, through their authorized personnel or representative, shall submit to ITAD, a sworn certification stating that there is no change in the domestic laws of its Home Country granting income tax exemption to Philippine carriers.

- The sworn certification shall be submitted on or before January 31 of each year from the time the international carrier was issued a ruling by the BIR confirming its GPB tax exemption on the basis of reciprocity.

- Failure to submit the sworn certification shall be a ground for the revocation of such ruling.

Effectivity:

- These Regulations shall take effect after 15 days following its complete publication in a newspaper of general circulation in the Philippines.

(Editor's Note: RR No. 15-2013 was published in the Manila Bulletin *on September 24, 2013.)*

RR No. 16-2013 amends RR Nos. 16-2003 and 24-2003 and prescribes new rules on the collection of business, income and WT on income payments by and to privilege stores, popularly known as "tiangge", and imposes obligations on the organizers or exhibitors of space for the operation of such stores and the privilege store operators.

Revenue Regulations No. 16-2013 dated August 22, 2013

Definition of Terms:

- "Privilege Store" refers to a stall or outlet which is not permanently fixed to the ground and is normally set up in places like shopping malls, hospitals, office buildings, hotels, villages or subdivisions, churches, parks, streets and other public places, for the purpose of selling a variety of goods or services for short durations of time or during special events (including festivals, fiestas, and others). However, should the store engage in any business activity for a cumulative period of more than 15 days, it shall not be considered a "privilege-store" under these Regulations.

  If the privilege store is operating more than one business activity in a separate venue or simultaneously operating several or multiple business activities in one venue, it shall be considered one day per business activity in the computation of cumulative number of days in a given taxable year.

- "Exhibitor" or "Organizer" refers to the primary lessee of the entire space where the operations of privilege stores are held by virtue of a lease contract, executed between the owner of the leased property and the organizer, who subsequently sub-leases the same to the privilege store operators during the entire duration of the lease contract. In case the owner of the real property is the one directly leasing to the privilege store operator defined below, such owner shall be constituted as the exhibitor or organizer for this purpose.

- "Privilege Store Operator" refers to the individual leasing from the lessor/owner or subleasing from the exhibitor or organizer, a space upon which privilege stores are erected for the purpose of selling goods or services during the entire duration of the lease contract/s. However, should the duration exceed a cumulative period of 15 days in any taxable year, the person or entity shall be considered habitually engaged in business and shall not be considered a "privilege store operator" under these Regulations.

- Persons appearing to be doing business as privilege store operators but who are disqualified under these regulations, i.e., they have operated for more than 15 days, shall be registered with the BIR as regular taxpayers. As such, they are required to have their own sets of invoices and/or official receipts and pay taxes such as income tax, business tax (percentage or VAT) and remit WT, particularly on rental.

- "Regular taxpayers" refer to business persons other than privilege store operators or organizers as defined above.

Obligations of Exhibitor or Organizer:

- To post in a conspicuous place the Certificate of Registration (COR) of the organizer:

    1. If not yet registered with the BIR, the exhibitor or organizer must register at least 15 days before the commencement of privilege stores activity/ies, and shall be valid within the calendar year.

    2. The principal place of business of the exhibitor or organizer shall be considered as Head Office (HO). If the address of the areas or spaces devoted to the establishment of privilege stores is different from the principal place of business, the same shall be registered as branch/es.

- To deduct and withhold EWT upon accrual or payment of lease rentals to the owner of real property;

- To inform the Revenue District Office (RDO):

    1. File the Lessees Information Statement with the RDO having jurisdiction over the place where such privilege stores have been set up, or where the exhibit/event is to be held, on or before the start of the exhibit/event.

    2. Participating sellers-retailers with regular or permanent places of business who are already registered with the BIR must submit a copy of the COR to the exhibitor or organizer.

    3. To ensure presentation of TIN and official receipts/sales or commercial invoice, submission of Information Statement, and remittance of actual WT liabilities by the lessees/tenants considered as regular taxpayers:

        In case of those classified as privilege store operators, the organizer or exhibitor shall only require the presentation of TIN.

- To keep books of accounts and issue receipts;

- To provide Cash Register Machines/Point of Sale machines or its own official receipts/sales or commercial invoices for the use of privilege stores operators who are not registered as Regular Taxpayers Engaged in Trade or Business, or Barangay Micro Business Enterprises (BMBEs). For purposes of these Regulations, the relationship between the exhibitor or organizer and the privilege store operators who are not registered as regular taxpayer engaged in trade or business, or BMBEs, shall be that of consignor-consignee relationship. The consignee, for these purposes, is only acting as "pass through entity" where the income on the sale is ultimately taxed to the consignor.

- To ensure the submission of List of Sales within 5 days after the privilege store operation. The exhibitor or organizer also has the obligation to reconcile the sales in its CRM/POS, which shall be included in the report to be submitted to the BIR for later audit.

- To report non-compliance to the BIR - The authority of the organizer to monitor privilege stores' compliance with these Regulations, with the corresponding power to revoke the lease agreement, shall form part of the Contract of Lease executed between the parties.

If applicable, a Report on Non-Compliance of Privilege Store Operators/Tenants/Lessees shall be submitted to the RDO having jurisdiction over the place where such privilege stores have been set up within 10 days from the start of the exhibit/event.

Obligations of Privilege Store Operators:

- To deduct and withhold the EWT upon accrual or payment of rentals of sub-leased spaces to the exhibitor or organizer, or lessor/owner of leased property

- To file Income Tax Returns - Every privilege store operator shall report his/her income in the Annual Income Tax Return to be filed on or before April 15th of the year, following the calendar year the income was earned.

- To submit Information Statement on Privilege Store Activities - Persons who sell their goods/services through privilege stores shall submit an Information Statement on Privilege Store Activities on or before the first day on which the privilege store shall operate.

- To keep books of accounts and issue official receipts/sales or commercial invoices - Persons who sell their goods/services through privilege stores shall keep a journal and a ledger, or their equivalent. The privilege store operators shall issue the official receipts/sales or commercial invoices provided by the exhibitor or organizer either through:

    1. Cash Register Machines/Point of Sales (CRM/POS);
    2. Centralized CRM/POS/Payment Centers; or
    3. Manual official receipts/sales or commercial invoices

- To submit List of Sales on Privilege Store Activities to the exhibitor or organizer within 5 days after the privilege store operation.

Obligations of Lessees/Tenants not classified as "Privilege Stores Operators" (Regular Taxpayers):

- To deduct and withhold EWT upon accrual or payment of rentals of sub-leased spaces to the exhibitor or organizer, or lessor/owner of leased property

- To keep books of accounts and issue receipts/sales or commercial invoices - persons who sell their goods or services through privilege stores shall keep a journal and a ledger, or their equivalent.

- To file Income, Withholding, Business (Percentage or VAT) and other tax returns, and pay the correct amount of taxes - Every person who participates in exhibits/events, and sells goods or services is obliged to include the sales/receipts from such exhibits/events in his actual sales/receipts reported to the BIR, and pay the correct amount of taxes.

- To file other Information Returns

These regulations take effect after 15 days following publication in any newspaper of general circulation.

(Editor's Note: RR No. 16-2013 was published in the Manila Bulletin *on September 27, 2013.)*

RR No. 17-2013 clarifies the new retention period for books of accounts and other accounting records.

Revenue Regulations No. 17-2013 dated September 27, 2013

- All taxpayers are required to preserve their books of accounts, including subsidiary books and other accounting records, for a period of 10 years reckoned from the day following the deadline in filing a return, or if filed after the deadline, from the date of the filing of the return for the taxable year when the last entry was made in the books of accounts.
- *Other accounting records*, which includes the corresponding invoices, receipts, vouchers and returns and other source documents supporting the entries in the books of accounts, is also subject to the 10-year retention period, counted from the date of last entry in the books to which they relate.
- *Last entry* refers to a particular business transaction or an item thereof that is entered or posted last or latest in the books of accounts when the same was closed.
- If the taxpayer has any pending protest or claim for tax credit/refund of taxes and the pertinent books and records are material to the case, the taxpayer is required to preserve his/its books of accounts and other accounting records until the case is finally resolved.
- Unless a longer period of retention is required under the Tax Code or other relevant laws, the independent Certified Public Accountant who audited the records and certified the financial statements of the taxpayer is required, equally as the taxpayer, to maintain and preserve copies of the audited and certified financial statements for a period of 10 years from the due date of filing the annual income tax return or the actual date of filing thereof, whichever comes later.
- These regulations shall take effect 15 days following its publication in 2 newspapers of general circulation.

(Editor's Note: RR No. 17-2013 was published in the Manila Bulletin *and the* Philippine Daily Inquirer *on September 28, 2013.)*

RMC No. 61-2013 prohibits the printing of principal and supplementary receipts/ invoices by non-accredited/unauthorized printers.

Revenue Memorandum Circular No. 61-2013 dated September 11, 2013

- Only printers who have undergone the accreditation process and have been granted accreditation by the BIR are authorized to print principal and supplementary receipts/invoices.
- Issuing receipts/invoices printed by non-accredited/unauthorized printers is tantamount to issuance of invalid receipts/invoices, which shall not give rise to input tax credit to be claimed by VAT taxpayers.

PEZA Issuance

All land and building spaces inside a manufacturing economic zone shall be sold or leased only to entities registered or entitled to be registered with PEZA; otherwise, PEZA shall have the right to deny any application for a Permit to Locate.

Memorandum Circular No. 2013-027 dated September 10, 2013

- A manufacturing economic zone refers to a specialized industrial estate located physically and/or administratively outside the customs territory and is predominantly oriented to export production.

- A developer/operator of a manufacturing economic zone is allowed to lease, sell, assign, mortgage, transfer or otherwise encumber the area designated as an ecozone or any right or interest only in favor of entities who are registered or entitled to be registered with PEZA, and who in fact subsequently register.

- At least 70% of the total leasable/saleable area of a manufacturing economic zone shall be devoted for export manufacturing enterprises, and the remaining 30% shall be for other services/activities complementing the operation of the economic zone and PEZA-registered export enterprises.

- All land/building spaces inside a manufacturing economic zone shall be sold or leased in favor of entities registered or entitled to be registered with PEZA; otherwise, PEZA shall have the right to deny any application for Permit to Locate which does not meet the qualifying criteria set forth under Board Resolution No. 09-370 dated July 21, 2009.

BSP Issuances

Circular No. 811 amends item (c), Subsection X240.4 of the Manual of Regulations for Banks (MORB) on application for authority to accept government deposits.

BSP Circular No. 811 dated September 13, 2013

- In case of deposits maintained by the National Government, its unincorporated branches, agencies and instrumentalities, the application requires a written authority to open deposit accounts and/or deposit government funds, which should be signed by the duly authorized official of the DOF/BTr and of the department, bureau, agency or office making the deposit.

- The Circular takes effect 15 days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 811 was published in Business World *on September 20, 2013.]*

Circular No. 812 prescribes guidelines on the submission of a CCBAR by all BSP-supervised financial institutions with credit card operations, and their subsidiary/affiliate credit card companies; and adds Subsection X320.16 in the MORB and Subsections 4320Q.16 and 4301N.16 in the MORNBFI.

BSP Circular No. 812 dated September 23, 2013

- All banks and quasi-banks, and their subsidiaries/affiliates, with credit card exposures shall submit the monthly credit card business activity report (CCBAR) containing data on credit card issuers/acquirers, cardholders, complaints, and card usage locations on a quarterly basis.

- Any banks/quasi-banks and their subsidiaries and affiliates that fail to comply with the provisions shall be liable to administrative sanctions under Subsection X192.2 of the MORB and Subsection 4192Q.2 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI).

- The Circular takes effect 15 days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 812 was published in Business World *on September 30, 2013]*

SEC Issuances

SEC MC No. 15 prescribes policies and guidelines on the issuance by financing and lending companies of CPs, which are exempt from registration requirements pursuant to the Securities Regulation Code.

SEC Memorandum Circular No. 15 dated July 18, 2013

- Financing and lending companies that issue or propose to issue commercial papers (CPs) shall submit the following reportorial requirements:

    1. Annual Information Statement (AIS) using SEC Form 2013-IS-ECP on or before January 30 of each year; and

    2. Quarterly Report using SEC Form Q-EPS within 30 calendar days from the end of each quarter.

- Request for exemption covering CPs already issued prior to January 2014 shall only be subject to the payment of filing fee of 1/10 of 1% of the amount of CP issued plus 1% legal research fee (LRF).

    1. Request for exemption to be issued in January 2014 onwards and without prior filing of the request or approval of the SEC shall be subject to penalty for issuance of securities without prior registration, in addition to the payment of filing fee and LRF.

    2. For short term CPs, the exemption shall be effective from the date of approval until December 31 of the immediately succeeding year.

    3. For long term CPs, the exemption shall be effective from the date of approval until December 31 of the third year succeeding the year of approval

- The requirement that a CP shall be issued to not more than 19 lenders shall be deemed complied with if, at any given time, the outstanding CPs are issued to not more than 19 non-institutional lenders.

- The requesting company must establish compliance with:

    1. Current ratio of at least 1:1,
    2. Debt to equity ratio of not more than 3:1, and
    3. Total assets to total liabilities ratio of at least 1:1.

- For CP issuances amounting to more than PhP50 Million, as appearing in earlier audited financial statements (AFS) but were already reduced as of the end of 2013, the company shall no longer be required to file a request for exemption.

- The company shall still comply with the required submission of Annual Information Statement (SEC Form 2013-IS-ECP) and Quarterly Report (SEC Form Q-EPS).

SEC MC No. 16 adopts measures in the filing of the Audited Financial Statements (AFS) of companies whose fiscal year ends on December 31, 2013.

SEC Memorandum Circular No. 16 dated September 13, 2013

- For companies whose fiscal year ends on December 31, 2013, the following measures must be complied with in filing the AFS:

    1. All corporations, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations that file their AFS at the SEC Head office in Mandaluyong, Davao, Cebu,

Iloilo and Baguio Extension Offices shall, depending on the last numerical digit of their SEC registration or license number, be governed by the following schedule in the filing period for 2014:

- April 14, 15, 16, 17, 18 - "1" , "2"
- April 21, 22, 23, 24, 25 - "3", "4"
- April 28, 29, 30, May 2 - "5", "6"
- May 5, 6, 7, 8, 9 - "7", "8"
- May 12, 13, 14, 15, 16 - "9", "0"

- The above filing schedule shall not apply to the following corporations:

  1. Those whose fiscal year ends on a date other than December 31, 2013;
  2. Those whose securities are listed on the Philippine Stock Exchange;
  3. Those who are being audited by the Commission on Audit.

- Prior to April 14, 2014, all corporations may file their AFS regardless of the last numerical digit of their registration or license number.

- Late filings shall be accepted starting May 19, 2014 and shall be subject to the prescribed penalties which shall be computed from the date of the last day of the filing schedule.

- The AFS, other than the consolidated financial statements, need to be stamped "received" by the BIR or its authorized banks.

- The basic components prescribed under the Securities Regulation Code (SRC) shall be presented for pre-screening.

  1. Failure to comply with any of the formal requirements under the SRC, including the prescribed qualifications for independent auditors, shall be considered sufficient ground for the denial of the receipt of the financial statements.

  2. The acceptance and receipt by the SEC of the financial statements shall be without prejudice to the fines that may be imposed for any material deficiency or misstatement that may be found upon evaluation of the specific contents thereof.

[Editor's Note: SEC MC No. 16 was published in Manila Standard Today *on September 25, 2013.]*

SEC MC No. 17 prescribes guidelines on applications for re-registration of corporations with dissolved or revoked certificates of registration.

SEC Memorandum Circular No. 17 dated September 25, 2013

- The following provisions are added to Section 15 of SEC MC No. 5, series of 2008:

  1. No application for re-registration of corporations with dissolved or revoked certificates of registration shall be processed by the SEC unless the application is accompanied by the following documents:

     - Board resolution, executed and signed under oath by the hold-over board of directors/ trustees of the dissolved or revoked corporation;
     - Latest General Information Sheet of the dissolved or revoked corporation, stamped "received" by the SEC; and

- Affidavit, executed under oath by the hold-over corporate secretary, attesting that:

    a. There are no properties owned by the dissolved or revoked corporation due for liquidation;
    b. No property is transferred to the new corporation;
    c. In case of stock corporations, used subscription payment without undergoing corporate liquidation process.

- Upon approval of the re-registration, the certificate of registration to be issued to the new corporation shall indicate the following as confirmation that the same is a separate and distinct entity from the dissolved or revoked corporation:

    1. New SEC registration number; and
    2. Pre-generated TIN .

When the trustee of more than 200 stockholders of a dissolved corporation subscribed to the shares of a new corporation, the new corporation may be considered as a "public company" since a trust was established in favor of the more than 200 stockholders.

SEC-OGC Opinion No. 13-09 dated September 2, 2013

Facts:

P Co. was initially registered with the SEC in 1956. P Co. had more than 600 corporate as well as individual stockholders. However, its existence expired in 2009 since it failed to extend its 50 year corporate life. The stockholders of P Co. had no intention to liquidate, but intended that its regular business be continued. As a result, in 2010, the stockholders representing 2/3 of the outstanding capital stock of P Co. entered into a trust agreement for the purpose of liquidating the assets of P Co., and investing the same in a reincorporated New P Co. In the Articles of Incorporation of the New P Co., there are 12 subscribers, including one Mr. X **in trust** for the 604 stockholders of the old P Co., representing 5 Billion shares.

Issue:

Is the New P Co. a public corporation or "public company" by virtue its 12 subscribers including one Mr. X in trust for the 604 stockholders of the expired old P Co.?

Ruling:

Yes. In *Philippine Veterans Bank v. Callangan*, the Supreme Court defined a "public company" as any corporation with a class of equity securities listed on an Exchange or with assets in excess of PhP50 Million and **having 200 or more holders**, at least 200 of which are holding 100 shares of a class of its equity securities.

A holder or stockholder includes a person holding stocks in trust and trustees holding corporate stock are regarded for all legal purposes as stockholders. However, the rights of a beneficial owner will, of course, be recognized and protected in equity in proper cases. In other words, even where legal title to stock is vested in a certain person, equity will treat him as a trustee holding it for the real and beneficial owners, in a proper case.

In this case, the 604 stockholders of the dissolved P Co. are considered stockholders of the New P Co. since a trust was established in their favor. Thus, it would appear that the New P Co. has more than 200 shareholders and is considered a "public company."

Court Decisions

Oakwood Management Services (Philippines), Inc. vs. Commissioner of Internal Revenue
CTA Case No. 7989 (Special Second Division) promulgated August 8, 2013

A PAN may or may not be protested by the taxpayer, and the non-filing of such protest does not render the PAN final and unappealable.

The issuance of the FAN before the lapse of the 15-day period for the taxpayer to file its protest to the PAN does not inflict any prejudice on the taxpayer for as long as the BIR properly served the FAN, apprised the taxpayer of the legal and factual bases of the assessment, and gave the taxpayer the opportunity to protest or dispute the same.

Facts:

The Commissioner of Internal Revenue (CIR) issued a Letter of Authority (LOA) against Oakwood Management Services (OMS) for the examination of its books of accounts and other accounting records for 2005.

On January 6, 2009, OMS received by mail a Preliminary Assessment Notice (PAN), whereby the BIR proposed to assess OMS various deficiency taxes. Ten days after its receipt of the PAN and before the lapse of the 15-day period allowed to respond to the PAN, OMS received a Formal Assessment Notice (FAN) from the BIR.

Within the prescribed 15-day period, OMS filed its answer to the PAN, where it disputed the proposed deficiency tax assessments. Moreover, OMS filed its protest on the FAN, and submitted the relevant supporting documents within the periods provided under the law.

In the absence of a decision on its protest, OMS appealed to the Court of Tax Appeals (CTA).

Issue:

Did the CIR violate OMS' right to due process when he issued the FAN before the lapse of the 15-day period to respond to the PAN?

Ruling:

No. The CIR did not violate OMS' right to due process.

A protest against the PAN, unlike the protest against the FAN, is not indispensable. A PAN may or may not be protested by the taxpayer, and the non-filing of such protest does not render the PAN final and unappealable.

The issuance of the FAN before the lapse of the 15-day period for the taxpayer to file its protest to the PAN does not inflict prejudice on the taxpayer, for as long as the BIR properly served a FAN and the taxpayer was able to intelligently contest the FAN by filing a protest letter within the period provided by law.

The BIR afforded OMS procedural due process when it fully apprised OMS of the legal and factual bases of the assessment and gave OMS the opportunity to substantially protest or dispute the assailed assessments.

Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue
Supreme Court G.R. No. 188550 promulgated August 19, 2013

The failure to strictly comply with the requirement under RMO No. 1-2000 to file a TTRA 15 days prior to availment of the provisions of a tax treaty, should not deprive a taxpayer of the benefit of a tax treaty.

Facts:

On October 21, 2003, Deutsche Bank remitted after-tax branch profits to its head office in Germany using the 15% branch profits remittance tax (BPRT) prescribed under the Tax Code. On October 4, 2005, believing that it overpaid the BPRT, Deutsche Bank filed with the BIR –

(i) an administrative claim for refund or issuance of a tax credit certificate (TCC) for the difference between the 15% BPRT that it had paid in 2003, and the 10% BPRT rate prescribed under the RP-Germany Tax Treaty; and

(ii) a request for confirmation of its entitlement to the 10% BPRT rate under the RP-Germany Tax Treaty.

On October 18, 2005, Deutsche Bank filed a Petition for Review with the CTA reiterating its claim for refund or issuance of a TCC for the amount of BPRT it had overpaid. The CTA denied the refund on the ground that the application for tax treaty relief (TTRA) was not filed with the BIR-ITAD 15 days prior to the payment of the BPRT and actual remittance of the branch profits to Germany. Citing the *Mirant case*, the CTA ruled that a prior TTRA is mandatory, and non-compliance with this prerequisite is fatal to the taxpayer's availment of the preferential tax treaty rate.

Issue:

Is the filing of a tax treaty relief application 15 days before payment of the branch profits mandatory to avail of the 10% preferential BPRT rate under the treaty?

Ruling:

No. The failure to strictly comply with the requirement under RMO No. 1-2000 to file a TTRA 15 days prior to availment of the provisions of a tax treaty, should not deprive a taxpayer of the benefit of a tax treaty.

Our Constitution adheres to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the States that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in the Philippines.

A State that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure fulfillment of the obligations undertaken. Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements, especially where the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of benefits under said agreement.

The 15-day period for filing the TTRA under RMO No. 1-2000 should not operate to divest entitlement to the tax treaty provision/benefit, since to do so would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the tax treaty availment for failure to apply within the 15-day period would impair the value of the tax treaty. At most, the TTRA should merely operate to confirm the entitlement of the taxpayer to the relief under the treaty,

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Non-compliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors.

In refund cases, the prior TTRA requirement becomes illogical where the very basis of the claim for refund is erroneous or excessive payment arising from non-availment of the tax treaty rate. Section 229 of the Tax Code provides the taxpayer a remedy for tax recovery when there has been an erroneous payment of tax. The outright denial of the bank's claim for refund on the sole ground failure to apply for tax treaty relief prior to the payment of the BPRT would defeat the purpose of Section 229.

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